

September 1, 1995

STATE OF HAWAII
STATE PROCUREMENT OFFICE
GENERAL TERMS AND CONDITIONS
FOR
GOODS AND SERVICES

Attached are the State Procurement Office's General Terms and Conditions, dated September 1, 1995 which will be made a part of all offers for goods and services contracts by reference only, and will not be attached to every solicitation or contract. It will be necessary for you to retain this copy for future use until further notice.

Offerors are cautioned to read and understand all the terms and conditions contained in the General Terms and Conditions.

STATE OF HAWAII
STATE PROCUREMENT OFFICE
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SECTION 1 - DEFINITIONS OF TERMS

Terms as used in these General Terms and Conditions, unless the context requires otherwise, shall have the following meaning:

1.1 BID

Bid means any offer submitted in competitive sealed bidding or in the second phase of multi-step bidding.

1.2 BID OR PROPOSAL FORM

The prescribed form or format which a offerer uses to submit his offer.

1.3 BID OR PROPOSAL GUARANTY OR SECURITY

The security when required, furnished by an offerer with his offer to ensure that the offerer will enter into the contract with the [STATE] and execute the required contract and payment bonds covering the work contemplated, if his offer is accepted.

1.4 CHANGE ORDER

Change order means a written order signed by the procurement officer, directing the CONTRACTOR to make changes which the changes clause of the contract authorizes the procurement officer to order without the consent of the CONTRACTOR.

1.5 CONTRACT

Contract means the combination of the solicitation, including the instructions to offerors, the specifications or scope of work, the special provisions, and the general terms and conditions; the offer and any best and final offers; and any amendments to the solicitation or to the contract; and any terms implied by law.

1.6 CONTRACT BOND

The approved form of security furnished by the CONTRACTOR and his surety or sureties or by the CONTRACTOR alone, to ensure completion and satisfactory performance of the contract in accordance with the terms of the contract and to guarantee full payment of all claims for labor, materials and supplies furnished, used or incorporated in the work.

1.7 CONTRACT MODIFICATION

Contract modification means any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual action of the parties to the contract.

1.8 CONTRACTOR

An individual, partnership, firm, corporation, joint venture or other legal entity undertaking the execution of work under the terms of the contract with the [STATE], and acting directly or through his, their or its agents, employees or sub-contractors.

1.9 DAYS

Days means calendar days unless otherwise specified.

1.10 HEAD OF THE PURCHASING AGENCY

The head of any agency with delegated procurement authority by law or from a chief procurement officer of this [STATE] to enter into and administer contracts.

1.11 OFFER

An offer means a bid or proposal as defined in sections 1.1 and 1.15, in response to any solicitation.

1.12 OFFEROR

Any individual, partnership, firm, corporation, joint venture or other legal entity, submitting directly or through a duly authorized representative or agent, an offer for the work or services contemplated in response to a solicitation as defined in 1.17.

1.13 PROCUREMENT OFFICER

Procurement officer means the person with procurement delegation duly authorized to enter into and administer contracts and make written determinations with respect to the contract. The term includes an authorized representative acting within the limits of authority. The delegated authority is received from the chief procurement officer directly or through the head of a purchasing agency or designee to the procurement officer.

1.14 PRIORITY-LISTED OFFERORS

Priority-listed offerors are the three or more responsive and responsible offerors who have submitted the highest rank proposals.

1.15 PROPOSAL

A proposal means any offer submitted in response to any solicitation, except a bid as defined in section 1.1.

1.16 PURCHASING AGENCY

Purchasing agency means any governmental body which is authorized by law or rules, or by way of delegation to enter into contracts for procurement of goods, services, or construction.

1.17 SOLICITATION

Solicitation means an invitation for bids ("IFB"), used in the competitive sealed bidding process or a request for proposals ("RFP"), used in the competitive sealed proposal process for the purpose of obtaining bids or proposals to perform a [STATE] contract.

1.18 SPECIAL PROVISIONS

The terms and conditions pertaining to the specific solicitation in which they are contained; including but not limited to terms and conditions describing the preparation of solicitations, evaluation of offers, determination of award, plus those applicable to performance by the CONTRACTOR.

Additions or revisions to the General Terms and Conditions, which shall be considered a part of the General Terms and Conditions, setting forth conditions or requirements applicable to the particular project or contract under consideration shall be included in the Special Provisions. Should any Special Provisions conflict with these General Terms and Conditions, said Special Provisions shall govern.

1.19 SPECIFICATIONS

A description of what the purchasing agency requires and, consequently, what an offeror must offer to be considered for award.

1.20 [STATE]

[STATE means the remaining departments of the executive branch and all governmental bodies administratively attached to it, excluding the judiciary, the legislature, the department of education, University of Hawaii, the division of community hospitals, and the office of Hawaiian affairs, except where specifically included in any particular solicitation.]

1.21 SURETY

The individual, firm, partnership or corporation other than the CONTRACTOR, which executes a bond with and for the CONTRACTOR to ensure the CONTRACTOR's acceptable performance of the contract.

1.22 WORK

The furnishing by the CONTRACTOR of all labor, services, materials, equipment, and other incidentals necessary for the satisfactory performance of the contract.

SECTION 2 - OFFER REQUIREMENTS AND CONDITIONS

2.1 COMPETENCY OF OFFEROR

Prospective offeror must be capable of performing the work for which offers are being called. Either before or after the deadline for an offer, the purchasing agency may require offeror to submit answers to questions regarding facilities, equipment, experience, personnel, financial status or any other factors relating to his ability to furnish satisfactorily the goods or services being solicited by the [STATE]. Any such inquiries shall be made and replied to in writing; replies shall be submitted over the signatures of the person who signs the offer. Any offeror who refuses to answer such inquiries will be considered non-responsive. All answers to such questions will be handled by the purchasing agency on a confidential basis and will be returned after they have served their purpose.

The purchasing agency also reserves the right to visit an offeror's place of business to inspect his facilities and equipment and to observe his methods of operation in order to facilitate evaluation of performance capabilities.

2.2 SOLICITATION FORMS

Prospective offerors will be furnished with solicitation forms which may include but not be limited to a statement of work, the location, description and the contract time of the contemplated work, the various quantities being requested, estimated and/or firm, and items of work to be performed or materials to be furnished, along with a schedule of items for which unit prices and/or lump sum prices are asked, depending on the type of solicitation, e.g. invitation for bids or request for proposals.

The General Terms and Conditions, specifications, Special Provisions and other documents referenced in or attached to the solicitation shall be considered a part of the offer whether attached to the solicitation or not at the time of its submission. Such documents shall not be altered in any way when the proposal is submitted and any alterations so made by the offeror may be cause for rejection of the offer.

2.3 EXAMINATION OF GENERAL TERMS AND CONDITIONS, SPECIFICATIONS, SITE OF WORK, ETC.

The offeror shall carefully examine the site of the contemplated work, the solicitation, General Terms and Conditions, specifications, Special Provisions, amendments, required contract and bond forms, etc. before submitting offers. The submission of an offer shall be considered as a warranty that the offeror has made such careful examination and is satisfied with the conditions to be encountered in performing the work and with the requirements of the solicitation, General Terms and Conditions, specifications, Special Provisions, amendments, required contract and bond forms.

No extra compensation will be given by reason of the CONTRACTOR's misunderstanding or lack of knowledge of the requirements of the work to be accomplished or the conditions to be encountered in performing the work.

2.4 ADDENDA AND INTERPRETATIONS

Discrepancies, omissions or doubts as to the meaning of General Terms and Conditions, specifications or Special Provisions should be communicated in writing to the procurement officer and must be received by the purchasing agency no later than five (5) calendar days prior to the date fixed for opening. Any interpretation, if made, and any supplemental instructions will be in the form of written addenda to the solicitation, which will be mailed, faxed, or made available for pick up by all prospective offerors, prior to the date fixed for the opening of offers. It shall be presumed that any addenda or interpretations so issued have been received by an offeror and such addenda or interpretations shall become a part of the contract documents.

2.5 PREPARATION OF OFFER

Proposals submitted in response to request for proposals (RFP) shall be in the format prescribed by the RFP.

The bids submitted in response to an invitation for bids (IFB) must be prepared in ink or typed on the form furnished by the purchasing agency or on an exact copy thereof in full accordance with the instructions given. For each item, the offeror shall specify the unit and total price in figures in the columns provided for that purpose and, if required, the total sum of all items being offered.

Where the IFB involves the furnishing and delivery of goods, the price shall include the cost of delivery to the specified destination, at which point acceptance of said goods will be made by authorized personnel. Should special requirements involving additional costs to the vendor be necessary, the requirements will be stated in the special provisions and offers for the costs therefor shall be governed by the special provisions.

Only one bid in response to an IFB for the same work from an individual, firm, partnership, corporation or joint venture under the same or different name will be accepted. If more than one bid is offered for the same work, only the lowest priced bid may be considered; all others will be automatically rejected.

Competing subsidiary or jointly-owned companies may submit bids or proposals and these may be accepted for evaluation and award if such companies submit with their proposals a certificate of non-collusion, sworn to before a notary, which acknowledges that the offer is without collusion.

All prices shall include applicable Federal, state and local taxes. Any illegible or otherwise unrecognizable price offer shall cause automatic rejection of the offer.

Offers submitted in response to an IFB or RFP shall be signed in ink in the space provided on the bid or proposal page by (1) the owner of a sole proprietorship, (2) one or more members of a partnership, (3) one or more members or officers of each firm representing a joint venture, (4) one or more officers of a corporation, or (5) an agent of the offeror duly authorized to submit offers on the offeror's behalf.

2.6 USE OF FACSIMILES

(A) Copies of documents transmitted by vendors via facsimile machine shall be limited to the offer; and modifications or withdrawal of offers, pursuant to subsection (B) and (C).

(B) Modifications or withdrawal of an offer may be by facsimile machine pursuant to Section 2.9.

(C) An offer transmitted via facsimile machine shall be acceptable only if the offer is under \$25,000 when specifically allowed in the invitation for bids or request for proposals; provided: the facsimile offer is received in hand at the designated office by the time and date set for receipt of offers; the complete original offer with the bond, if required, is received within forty-eight hours from the time and date set for receipt of offers; and that the facsimile offer contains: the identification number of the invitation for bids or request for proposals; the time; the quantity; the price for the offer; all pages of the bid or proposal requiring an original signature; and a signed statement that the offeror agrees to all the terms, conditions, and provisions of the invitation for bids or request for proposals.

2.7 OFFER GUARANTY

Unless required by the special provisions, a bid or proposal security deposit, performance and payment bonds, or any other guaranty is not required on any offer for goods or services.

When required by the special provisions, an acceptable bid or proposal security deposit shall be in an amount equal to at least five percent of the amount offered and shall be limited to: a bond in a form satisfactory to the [STATE] underwritten by a company licensed to issue bonds in this STATE; legal tender; or a certificate of deposit, share certificate, cashier's check, treasurer's check, teller's check, or official check drawn by, or a certified check accepted by, a bank, a savings institution, or credit union insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration. Certificate of deposit, share certificate, cashier's check, treasurer's check, teller's check, official check, or certified check may be utilized only to a maximum of \$100,000, provided however, if the required security or bond amount totals over \$100,000, more than one instrument not exceeding \$100,000 each and issued by different financial institutions, may be submitted.

If an offer does not comply with the security requirements, the offer shall be rejected as nonresponsive, unless the failure to comply is determined by the chief procurement officer, the head of a purchasing agency, or the designee of such officer to be nonsubstantial pursuant to section 3-122-223, Hawaii Administrative Rules (HAR).

2.8 CERTIFICATION OF OFFEROR CONCERNING WAGES, HOURS AND WORKING CONDITIONS OF EMPLOYEES SUPPLYING SERVICES

All offerors for service contracts shall comply with section 103-55, Hawaii Revised Statutes, which provides as follows:

Wages, hours, and working conditions of employees of CONTRACTORS supplying services. Before any prospective offeror is entitled to submit any offer for the performance of any contract to supply services in excess of \$5,000 to any governmental agency, offeror shall certify that the services to be performed will be performed under the following conditions:

Wages. The services to be rendered shall be performed by employees paid at wages or salaries not less than the wages paid to public officers and employees for similar work.

Compliance with labor laws. All applicable laws of the Federal and state governments relating to workers compensation, unemployment compensation, payment of wages, and safety will be fully complied with.

No contract to perform services for any governmental contracting agency in excess of \$5,000 shall be granted unless all the conditions of this section are met. Failure to comply with the conditions of this section during the period of the contract to perform services shall result in cancellation of the contract.

It shall be the duty of the governmental contracting agency awarding the contract to perform services in excess of \$5,000 to enforce this section.

This section shall apply to all contracts to perform services in excess of \$5,000, including contracts to supply ambulance service and janitorial service.

This section shall not apply to:

- (1) Managerial, supervisory, or clerical personnel.
- (2) Contracts for supplies, materials, or printing.
- (3) Contracts for utility services.
- (4) Contracts to perform personal services under paragraphs (2), (3), (12), and (16) of section 76-16, Hawaii Revised Statutes, (HRS).
- (5) Contracts to operate refreshment concessions in public parks, or to provide food services to educational institutions.
- (6) Contracts with nonprofit institutions.

2.9 PRE-OPENING MODIFICATION OR WITHDRAWAL OF OFFERS

Offers may be modified or withdrawn prior to the deadline for submittal of offers by the following documents:

Modification of offers: a written notice received in the office designated in the solicitation, stating that a modification to the offer is submitted; or a written notice by facsimile machine sent to the office designated in the solicitation, stating that a modification to the offer is submitted; and the written notice accompanying the actual modification securely sealed in a separate envelope or container.

Withdrawal of offers: a written notice received in the office designated in the solicitation; or a notice by facsimile machine pursuant to section 3-122-9, to the office designated in the solicitation.

2.10 RECEIPT, OPENING, AND RECORDING OF BIDS

Upon its receipt, each bid and modification(s) shall be time-stamped but not opened, and stored in a secure place by the procurement officer until the time and date set for bid opening. Copies of bids transmitted via facsimile machine shall not be acceptable, except as provided for in the Special Provisions.

Bids and modification(s) shall be opened publicly, in the presence of one or more witnesses, at the time, date, and place designated in the IFB. The name of each bidder, the bid price(s), and such other information as is deemed appropriate by the procurement officer or his designated representative, shall be read aloud or otherwise made available. If practicable, such information shall also be recorded at the time of bid opening; that is, the bids shall be tabulated or a bid abstract made. The name(s) and address(es) of the required witnesses shall also be recorded at the opening.

The opened bids shall be available for public inspection at the time of bid opening except to the extent that the bidder designates trade secrets or other proprietary data to be confidential. Bidders shall ensure that material so designated as confidential shall be readily separable from the bid in order to facilitate public inspection of the nonconfidential portion of the bid. Prices and makes and model or catalogue numbers of items offered, deliveries, and terms of payment shall be publicly available at the time of bid opening regardless of any designation to the contrary.

The procurement officer, or his designated representative, shall examine the bids to determine the validity of any requests for nondisclosure of trade secrets and other proprietary data identified in writing. If the parties do not agree as to the disclosure of data, the procurement officer or his designated representative shall inform the bidders present at the bid opening that the material designated for nondisclosure shall be subject to written determination by the attorney general for confidentiality. If the attorney general determines in writing that the material so designated as confidential is subject to disclosure, the bidder submitting the material under review and other bidders who were present at the bid opening shall be so notified in writing and the material shall be open to public inspection unless the bidder protests under chapter 3-126, HAR.

The bids shall be open to public inspection subject to any continuing prohibition on the disclosure of confidential data.

When a purchasing agency denies a person access to a [STATE] procurement record, the person may appeal the denial to the office of information practices in accordance with section 92F-42(12), HRS.

Bids shall be unconditionally accepted without alteration or correction, except as allowed in sections 2.12 and 2.13.

2.11 RECEIPT AND REGISTRATION OF PROPOSALS

Proposals and modifications shall be time-stamped upon receipt and held in a secure place by the procurement officer until the established due date. Proposals shall not be opened publicly, but shall be opened in the presence of two or more procurement officials. Proposals and modifications shall be shown only to [STATE] personnel having legitimate interest in them.

After the date established for receipt of proposals, a register of proposals shall be prepared which shall include for all proposals: the name of each offeror; the number of modifications received, if any; and a description sufficient to identify the good or service item offered. The register of proposals shall be open to public inspection only after award of the contract.

An offeror shall request in writing nondisclosure of designated trade secrets or other proprietary data to be confidential. Offerors shall ensure that such data so designated as confidential shall be readily separable from the proposals in order to facilitate eventual public inspection of the nonconfidential portion of the proposal.

Proposals of the offeror(s) shall be open to public inspection after the contract is signed by all parties.

2.12 LATE OFFERS, LATE WITHDRAWALS, AND LATE MODIFICATIONS

Any notice of withdrawal, notice of modification of an offer with the actual modification, or any offer received at the place designated for receipt and opening of an offer after the time and date set for receipt and opening of offers is late. A late offer, late modification, or late withdrawal shall not be considered late if received before contract award and would have been timely but for the action or inaction of personnel within the procurement activity. A late offer or late modification that will not be considered for award shall be returned to the bidder unopened as soon as practicable and accompanied by a letter from the procurement activity stating the reason for its return. A late withdrawal request shall be responded to with a statement of the reason for non-acceptance of the withdrawal.

2.13 MISTAKES IN BIDS

(A) A bidder may correct a mistake in bid discovered before the time and date set for bid opening by withdrawing or correcting the bid as provided in section 2.9.

(B) Correction or withdrawal of a bid after the time and date set for bid opening because of an inadvertent, nonjudgmental mistake in the bid requires careful consideration to protect the integrity of the competitive bidding system, and to assure fairness. If the mistake is attributable to an error in judgment, the bid may not be corrected. Bid correction or withdrawal by reason of a nonjudgmental mistake is permissible but only to the extent it is not contrary to the interest of the governmental agency or the fair treatment of other bidders.

(C) When, after bid opening but before award, the procurement officer knows or has reason to conclude that a mistake has been made, including obvious, apparent errors on the face of the bid or a bid unreasonably lower than the other bids is submitted, such officer should request the bidder to confirm the bid. If the bidder alleges mistake, the bid may be corrected or withdrawn by the bidder if the conditions under subsections (D) and (E) of this section are met and if the mistake is a minor informality which is a matter of form rather than substance evident from the bid document, or an insignificant mistake that can be waived by the procurement officer or corrected by the bidder without prejudice to other bidders depending on which is in the best interest of the governmental jurisdiction soliciting the bid; that is, the effect on price, quantity, quality, delivery, or contractual conditions is negligible. Examples include the failure of a bidder to: return the number of signed bids required by the IFB; to sign the bid, but only if the unsigned bid is accompanied by other material indicating the bidder's intent to be bound; or to acknowledge receipt of an amendment to the IFB (if such acknowledgement is required by the IFB) but only if it is clear from the bid that the bidder received the amendment and intended to be bound by its terms; or the amendment involved had a negligible effect on price, quantity, quality, or delivery.

(D) If the mistake and the intended correct bid are clearly evident on the face of the bid document, the bid shall be corrected to the intended correct bid and may not be withdrawn. Examples of such mistakes include: typographical errors; errors in extending unit prices; transposition errors; and arithmetical errors. In the event of a discrepancy between unit bid prices and extensions, the unit price shall govern. In case of error in addition, the sum of the total amount offered for each item added shall govern.

(E) A bidder may be permitted to withdraw a low bid if a mistake is clearly evident on the face of the bid document but the intended correct bid is not similarly evident; or the bidder submits proof of evidentiary value which clearly and convincingly demonstrates that a mistake was made.

(F) A bidder may not correct a mistake in bid discovered after award of the contract except where the chief procurement officer or the head of the purchasing agency makes a written determination that it would be unreasonable not to allow the mistake to be corrected.

(G) When a bid is corrected or withdrawn, or correction or withdrawal is denied, under (C) or (D), the chief procurement officer or the head of a purchasing agency shall prepare a written determination showing that the relief was granted or denied in accordance with subchapter 5, chapter 3-122, HAR, except that the procurement officer shall prepare the determination required under paragraph (1) of subsection (C).

2.14 MISTAKES IN PROPOSALS

(A) Mistakes shall not be corrected after award of contract.

(B) When the procurement officer knows or has reason to conclude before award that a mistake has been made, the procurement officer should request the offeror to confirm the proposal. If the offeror alleges mistake, the proposal may be corrected or withdrawn pursuant to this section.

(C) Once discussions are commenced or after best and final offers are requested, any priority-listed offeror may freely correct any mistake by modifying or withdrawing the proposal until the time and date set for receipt of best and final offers.

(D) If discussions are not held, or if the best and final offers upon which award will be made have been received, mistakes shall be corrected to the intended correct offer whenever the mistake and the intended correct offer are clearly evident on the face of the proposal, in which event the proposal may not be withdrawn.

(E) If discussions are not held, or if the best and final offers upon which award will be made have been received, an offeror alleging a material mistake of fact which makes a proposal nonresponsive may be permitted to withdraw the proposal if: the mistake is clearly evident on the face of the proposal but the intended correct offer is not; or the offeror submits evidence which clearly and convincingly demonstrates that a mistake was made.

Technical irregularities are matters of form rather than substance evident from the proposal document, or insignificant mistakes that can be waived or corrected without prejudice to other offerors; that is, when there is no effect on price, quality, or quantity. If discussions are not held or if best and final offers upon which award will be made have been received, the procurement officer may waive such irregularities or allow an offeror to correct them if either is in the best interest of the [STATE]. Examples include the failure of an offeror to: return the number of signed proposals required by the request for proposals; sign the proposal, but only if the unsigned proposal is accompanied by other material indicating the offeror's intent to be bound; or to acknowledge receipt of an amendment to the request for proposal, but only if it is clear from the proposal that the offeror received the amendment and intended to be bound by its terms; or the amendment involved had no effect on price, quality or quantity.

2.15 OFFER INSPECTION

Offers to competitive sealed bids may be inspected only as provided for in section 2.10, above, and after award of contract. During the evaluation and award recommendation period, offers will not be available for inspection. For the competitive sealed proposals, except for confidential portions, the proposals shall be made available for public inspection after the contract is signed by all parties.

2.16 DISQUALIFICATION OF OFFERORS

An offeror shall be disqualified and his offer automatically rejected for any one or more of the following reasons: proof of collusion, in which case, all offers involved in the collusive action will be rejected and any participant to such collusion will be barred from future solicitations until reinstated; offeror's lack of responsibility and cooperation as shown by past work or services; offeror's being in arrears on existing contracts with the [STATE] or having defaulted on previous contracts; offeror's lack of proper equipment and/or sufficient experience to perform the work contemplated; offeror does not possess proper license to cover the type of work contemplated, if required; offeror's delivery of the offer after the deadline specified in the public notice calling for offers, or as amended, except as allowed in Section 3-122-29 (1), HAR, or offeror's failure to pay, or satisfactorily settle, all bills overdue for labor and material on former [STATE] contracts at the time of issuance of solicitation.

2.17 STANDARDS OF CONDUCT

Section 84-15, HRS, provides as follows:

(A) A state agency shall not enter into any contract to procure or dispose of goods or services, or for construction, with a legislator, an employee, or a business in which a legislator or an employee has a controlling interest, involving services or property of a value in excess of \$10,000 unless:

- (1) The contract is awarded by competitive sealed bidding pursuant to section 103D-302;
- (2) The contract is awarded by competitive sealed proposal pursuant to section 103D-303; or
- (3) The agency posts a notice of its intent to award the contract and files a copy of the notice with the state ethics commission at least ten days before the contract is awarded.

(B) A state agency shall not enter into a contract with any person or business which is represented or assisted personally in the matter by a person who has been an employee of the agency within the preceding two years and who participated while in state office or employment in the matter with which the contract is directly concerned.

(C) All offerors should be certain that their bids are not in violation of this law. The submittal form states that by submitting this offer, offeror certifies that his offer does not pose a conflict with section 84-15, HRS. Contracts awarded shall be void if there is a violation of section 84-15, HRS.

2.18 IRREGULAR OFFERS

Offers will be considered irregular and shall be rejected for the following reasons including but not limited to the following: if the offer is unsigned by the offeror; if the required offer guaranty received separately from the offer is not identifiable as guaranty for a specific offer, or is received after the date and time set for the opening; if the required offer guaranty is not in accordance with section 2.7 of these General Terms and Conditions; if the offeror or surety fails to sign the surety bond submitted as offer guaranty; if offeror fails to use the surety bond form furnished by the [STATE] or identical wording contained in the said form when submitting a surety bond as proposal guaranty; if the offer shows any non-compliance with applicable law or contains any unauthorized additions or deletions, conditioned, incomplete, or irregular or is in anyway making the proposal incomplete, indefinite, or ambiguous as to its meaning; or unbalanced offers in which the price for any item is obviously out of proportion to the prices for other items.

SECTION 3 - EVALUATION, AWARD AND EXECUTION OF CONTRACT

3.1 EVALUATION

(A) HAWAII EXCISE AND USE TAXES

Section 103-53.5, HRS, provides as follows:

Where the bidder or vendor is an out-of-state vendor not doing business in the STATE or is a person exempted from paying the applicable general excise tax, the package bid or purchase price, for the purpose of determining the lowest price bid, shall be increased by the applicable retail rate of general excise tax and the applicable use tax. The lowest responsible bidder, taking into consideration the above increases, shall be awarded the contract, but the contract amount of any contract awarded shall be the amount of the bid offered and shall not include the amount of the increases.

To facilitate compliance with this requirement, each bidder possessing a Hawaii I.D. number for General Excise Tax License shall enter it in the space provided, thereby attesting that he is doing business in the STATE and that he will pay such taxes on all sales made to the [STATE]. Except as provided in the Special Provisions, any bidder who cannot furnish a valid Hawaii General Excise Tax License number in the space provided will be considered as not doing business in the STATE and his bid will be evaluated accordingly.

(B) PREFERENCE FOR HAWAII PRODUCTS

Subchapter 1, Chapter 3-124, HAR provides as follows:

Hawaii products. In any expenditure of public funds, a purchasing agency shall review all purchase specifications in a bid or proposal for purchase from the Hawaii products list where such products are available, provided that the products: Meet the minimum specifications and the selling price f.o.b. jobsite; unloaded including applicable general excise tax and use tax does not exceed the lowest delivered price in Hawaii f.o.b. jobsite; unloaded including applicable general excise tax and use tax of a similar non-Hawaii product by more than: three per cent, where Class I Hawaii products are involved; five per cent where class II Hawaii products are involved; or ten per cent where Class III Hawaii products are involved.

Where offers contain both Hawaii and non-Hawaii products, then for the purpose of selecting the lowest offer or purchase price only, the price offered for a non-Hawaii product item shall be increased by adding thereto three per cent, five per cent or ten per cent where similar Class I, Class II or Class III Hawaii product items have been offered by another party pursuant to the preferences stated above. The lowest total offer, taking into consideration the above preferences, shall be awarded the contract unless the solicitation provides for additional award criteria. The contract amount of any contract awarded, however, shall be the amount of the price offered, exclusive of such preferences.

Any person desiring a preference pursuant to this subchapter, must have the product(s) qualified and registered on the Hawaii products list. The responsibility for qualification shall rest upon the person desiring the preference. The product(s) shall be found qualified and on the Hawaii products list before a preference may be granted. Persons desiring to qualify their product(s) shall complete according to instructions and file with the administrator, the "Application for Hawaii Products Preference", which is available from the State Procurement Office, and provide all additional information required by the administrator.

(C) PRINTING PREFERENCE

Subchapter 2, Chapter 3-124, HAR, provides that:

All printing, binding, and stationery work for the [STATE], or other political subdivision thereof shall be performed within the STATE, including all preparatory work, presswork, bindery work, and any other production-related work, and all requests for offers or contracts for such work shall so stipulate; provided that whenever it is established that any such work cannot be performed within the STATE or that the lowest price for which such work can be procured within the STATE exceeds the bid or charge of an out-of-state manufacturer of such item by fifteen per cent, the work or any part thereof so affected may be performed outside the STATE.

No payment shall be made by the [STATE], or other political subdivision thereof for printing, binding, or stationery work unless it appears that the work was done within the STATE or was authorized to be done outside the STATE pursuant to this section. In addition, any manufacturer violating a stipulation in an offer or contract that all work will be performed within the STATE shall be subject to a civil penalty in an amount not to exceed the offer or contract price to be collected by a civil action filed by the attorney general on behalf of the [STATE].

(D) RECIPROCAL PREFERENCE

Subchapter 3, Chapter 3-124, HAR, provides that:

To ensure fair and open competition for Hawaii businesses engaged in contracting with other states, the chief procurement officer may impose a reciprocal preference against bidders from those states which apply preferences. The amount of the reciprocal preference shall be equal to the amount by which the non-resident preference exceeds any preference applied by this STATE.

In determining whether a bidder qualifies as a resident offeror, the definition used by the other state in applying a preference shall apply.

This section shall not apply to any transaction if the provisions of the section conflict with any Federal laws.

(E) RECYCLED PRODUCTS PREFERENCE

Subchapter 4, chapter 3-124, HAR, provides that:

Solicitations issued by a governmental agency pursuant to section 103D-301, HRS, and consistent with section 3-124-22, HAR, shall contain a notice stating that a price preference will be given to recycled products. This price preference will be at least five per cent of the bid price, and will be used for bid evaluation, as specified in section 3-124-25, HAR.

When a purchase specifies recycled products only or when recycled products only are offered, the price preference shall not apply.

Offerors requesting a preference shall submit a completed certification form, as required by section 3-124-23, HAR, with each offer. Previous certifications shall not apply unless allowed by the solicitation.

All governmental agencies issuing solicitations shall provide an appropriate space for offeror to indicate whether a recycled or a non-recycled product is to be used or supplied and to list the prices of the recycled or non-recycled products or both being offered.

The preference shall be separate from any other preference allowed by statute.

(F) SOFTWARE DEVELOPMENT BUSINESSES PREFERENCE

Subchapter 5, Chapter 3-124, HAR, provides that:

The preference shall apply to all bids or offers issued by a purchasing agency when so stated in the solicitation.

Bids issued by a governmental agency pursuant to section 103D-301, HRS, shall contain a notice stating that a price preference will be given to Hawaii software development businesses. This price preference will be ten per cent of the bid price, and will be used for bid evaluation.

Bidders requesting a preference shall submit a completed certification form, as required by section 3-124-33, with each bid. Previous certifications shall not apply unless allowed by the bid.

Any bidder who fails to indicate that it is a Hawaii software development business will be presumed to be a non-Hawaii software development business and the bidder's proposal will be increased by ten per cent for purposes of evaluation.

Where a bid or purchase contains both Hawaii software development businesses and non-Hawaii software development businesses, then for the purpose of determining the lowest evaluated bid, the original bid price for the non-Hawaii software development businesses shall be increased by ten per cent.

The responsible bidder submitting the lowest evaluated bid(s), taking into consideration all applicable preferences shall be awarded the contract, provided the product being offered meets the minimum bid specifications.

The contract amount of any contract awarded shall be the original bid price offered, exclusive of any preferences.

(G) LOW TIE BIDS

Subchapter 5, chapter 3-122, HAR, provides that:

Low tie bids are low responsive bids from responsible bidders that are identical in price and which meet all the requirements and criteria set forth in the invitation for bids.

At the discretion of the procurement officer, award shall be made in any permissible manner that will resolve tie bids, including but not limited to:

Award the contract to a business providing goods produced or manufactured in this STATE or to a business that otherwise maintains a place of business in this STATE;

Where identical low bids include the cost of delivery, award the contract to the tie bidder farthest from the point of delivery; and

Award the contract to the identical bidder who received the previous award and continue to award succeeding contracts to the same bidder so long as all low bids are identical.

If no permissible method will be effective in resolving tie bids and a written determination by the procurement officer is made so stating, award may be made by drawing lots.

3.2 ACCEPTANCE OF OFFER

(A) Acceptance of offer, if any, will be made within sixty calendar days after the opening of offers, and the prices quoted by the offeror shall remain firm for the sixty day period. Unless otherwise provided, each individual item or group of items will be awarded to the responsive and responsible offeror whose offer complies with all the solicitation requirements. In determining the responsive and responsible offeror, offers will be evaluated not only on the amounts thereof, but on all factors relating to the satisfactory performance of the contract. Products must be of a quality and nature that will meet the needs and purposes of the intended use and must conform to all requirements prescribed in the specifications. The offeror must have the ability to perform as called for in the contract terms. The [STATE] shall be the sole judge of product or vendor capability. The successful vendor will be notified by letter that the offer has been accepted and that the vendor is being awarded the contract.

(B) If the offer is rejected or if the vendor to whom the contract was awarded fails to enter into the contract and furnish satisfactory security, if applicable, the purchasing agency may, at their discretion, award the contract to the next lowest or remaining responsible offeror or may publish another call for offers; provided in the case of only one remaining responsible offeror, the head of a purchasing agency may negotiate with such bidder to reduce the scope of work, if available funds are exceeded, and to award the contract at a price which reflects the reduction in the scope of work.

(C) The head of a purchasing agency further reserves the right to cancel the contract award at any time prior to execution of said contract by all parties, without any liability to the awardee and to any other offeror.

3.3 EXECUTION OF CONTRACT

(A) This section shall not apply to any contract in which the total amount payable to the CONTRACTOR cannot be accurately estimated at the time the contract is to be awarded.

(B) In cases where the contract award amounts to \$10,000 or more the [STATE] shall forward a formal contract to the successful offeror for execution. (Refer to Exhibit A for agreement form.) The contract shall be signed by the successful vendor and returned, together with a satisfactory contract bond if required, and other supporting documents, within ten days after receipt by the vendor or within such further time as the procurement officer may allow.

(C) No such contract shall be considered binding upon the [STATE] until the contract has been fully and properly executed by all the parties thereto and the [State Comptroller] has, in accordance with section 103D-309, HRS, endorsed thereon a certificate that there is an appropriation or balance of an appropriation over and above all outstanding contracts, sufficient to cover the amount required by the contract; with the exception of a multi-term contract, whereby, the [State Comptroller] shall only be required to certify that there is an appropriation or balance of an appropriation over and above all outstanding contracts, that is sufficient to cover the amount required to be paid under the contract during the fiscal year or remaining portion of the fiscal year of each term of the multi-year contract;

(D) In any contract involving not only [STATE] but supplemental funds from the Federal government, this section shall be applicable only to that portion of the contract price as is payable out of [STATE]. As to the portion of the contract price as is expressed in the contract to be payable out of Federal funds, the contract shall be construed to be an agreement to pay the portion to the CONTRACTOR, only out of Federal funds to be received from the Federal government. This subsection shall be liberally construed so as not to hinder or impede the [STATE] in contracting for any project involving financial aid from the Federal government.

(E) If the successful offeror is other than a sole proprietorship, it shall submit satisfactory evidence, e.g. certificate of corporate resolution, power of attorney or other such evidence of authority of the signers' authority to execute on the contract date the contract on behalf of the successful bidder. If such document has been submitted to the purchasing agency on a previous occasion, the successful offeror may submit a copy of this document, provided there has been no amendment, modification or rescission of the document previously submitted, and provided further, that no such copy shall be acceptable unless the date of the document previously submitted is dated within one year of the contract date. If there has been a modification, amendment or rescission of the evidence of authority previously submitted, then the superseding document shall be attached to the contract.

3.4 CONTRACT BOND

(A) The requirement for contract performance and payment bonds, if any, shall be stated in the Special Provisions of the solicitation.

(B) When required by the Special Provisions, a performance bond and a payment bond shall be delivered by the CONTRACTOR to the [STATE] at the same time the executed contract is delivered. Each amount of the performance and payment bonds shall not exceed fifty per cent of the amount of the contract price; provided, for contracts where contract price cannot be determined at the time of award, the amounts of the bonds shall be as stated in the solicitation.

(C) The acceptable performance and payment bonds are the same as the acceptable bid or proposal security deposit specified in section 2.7. (Refer to Exhibits C, D, E, F, G, and H for the forms to be submitted.) If a surety bond is submitted for either the performance or payment bond, in addition to the form prescribed, a power of attorney for the surety's attorney-in-fact executing the bond shall be provided.

3.5 FAILURE TO EXECUTE CONTRACT

If the offeror to whom a contract is awarded shall fail or neglect to enter into the contract and to furnish satisfactory security as required by section 3.4 within ten days after such award or within such further time as the procurement officer may allow, the purchasing agency shall pay the amount of offeror's proposal guaranty, as required under section 2.7, into the [State Treasury] as a realization of the [STATE]. The procurement officer may thereupon award the contract to the next lowest responsible offeror or may call for new offers, whichever method he may deem is in the best interest of the [STATE].

3.6 RETURN OF OFFER GUARANTIES

All offer guaranties submitted as required by subchapter 24, chapter 3-122, HAR, shall be retained until the successful offeror enters into contract and furnishes satisfactory security or if the contract is not awarded or entered into, until the procurement officer's determination is made to publish another call for offers. At such time, all offer guaranties, except surety bonds, will be returned.

3.7 SUBMISSION OF INSURANCE CERTIFICATION

(A) The CONTRACTOR agrees to deliver to the [STATE], when contract documents are executed, a certificate of insurance evidencing any and all insurance required by the special provisions. Said certificate shall contain an endorsement that such insurance may not be cancelled except upon thirty days notice to the [STATE]. It shall also contain a statement to the effect that the [State of Hawaii] is named additional insured under the policy(ies), if required by the Special Provisions.

(B) Failure of the CONTRACTOR to provide and keep in force insurance policy(ies) as required shall be regarded as material default under this contract, entitling the [STATE] to exercise any or all of the remedies provided in this contract for a default of the CONTRACTOR.

SECTION 4 - PERFORMANCE OF CONTRACT

4.1 CONTRACT ADMINISTRATION

It is expressly understood and agreed that the CONTRACTOR is an independent CONTRACTOR, with the authority to control and direct the performance and details of the work and services herein contemplated; however, the [STATE] retains the general right of inspection by a designated representative in order to judge, whether in the [STATE's] opinion, such work is being performed by the CONTRACTOR in accordance with the terms of this agreement.

4.2 COMPLIANCE WITH CONTRACT TERMS, ETC.

The work shall be completed in conformity with the specifications and each and every requirement of the general terms and conditions and other provisions forming a part of the contract. In the event the CONTRACTOR fails to so perform, the chief procurement officer or head of the purchasing agency, in addition to any other recourse, reserves the right to suspend the CONTRACTOR from bidding on any or all [STATE] contracts pursuant to Chapter 3-126, HAR.

4.3 CHANGE ORDERS AND MODIFICATIONS

The CONTRACTOR will not undertake to perform the portion of the work affected by the changes until a change order or modification has been approved and issued. (Refer to Exhibit I for Contract Change Order form and Exhibit J for the Contract Modification form.)

4.4 DELIVERY EXTENSIONS

In the case of contracts for the purchase of goods, the delivery date or the maximum number of days for delivery will be specified by the [STATE] in its solicitation requirements, and all goods must be delivered within the time specified. However, the CONTRACTOR will not be held responsible for delay due to fire, flood, riot, labor disturbances, war, shortage of transportation, act of God or other reason beyond his control, provided that he notifies the [STATE] of such delay and the reason therefor as soon as practicable after its occurrence and requests extension prior to the specified date of delivery. Requests for extension of time shall be accompanied by documents such as the CONTRACTOR's purchase order, manufacturer's acknowledgement, shipping manifest, and any other documents substantiating that the causes for delay were beyond the control of the CONTRACTOR. The [STATE] shall be the sole judge of whether such delay is truly beyond the control of the CONTRACTOR and whether extension will be granted. The [STATE] reserves the right to terminate the contract or to assess liquidated damages, if provided for in the contract, for delays not covered by specific authorized extension.

4.5 CONTRACT PROVISIONS TO CONSIDER TRAFFIC

The CONTRACTOR in performance of work called for in this contract shall schedule all work and related activities to minimize adverse impact on traffic congestion during peak traffic hours as required by section 103-15, HRS. The statutory provision reads as follows:

"Unless otherwise prohibited by law, all public contracts awarded under this chapter shall consider the extent to which the work undertaken pursuant to the contract will increase traffic congestion during peak traffic hours. The contract shall contain provisions to reasonably minimize any adverse impact."

For purposes of this requirement, morning peak traffic hours are 5:30 a.m. to 8:00 a.m. and afternoon peak traffic hours are 3:30 p.m. to 6:00 p.m.

SECTION 5 - LEGAL RELATIONS AND RESPONSIBILITY

5.1 LAWS TO BE OBSERVED

(A) The CONTRACTOR shall at all times observe and comply with all Federal, state and local laws or ordinances, rules and regulations which in any manner affect those engaged or employed in the performance of the work, the manufacture and sale of materials and equipment required under the contract, and the conduct of the work. The CONTRACTOR shall also comply with all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the work. Any reference to such laws, ordinances, rules and regulations shall include any amendments thereto.

(B) The CONTRACTOR shall protect and indemnify the [STATE] and all its officers, agents and employees against any claim or liability arising from or based on the violation of any such laws, ordinances, rules and regulations, orders and decrees, whether such violation is committed by the CONTRACTOR or his subcontractor or the employee or either or both. If any discrepancy or inconsistency is discovered in the contract for the work in relation to any such laws, ordinances, rules and regulations, orders or decrees, the CONTRACTOR shall forthwith report the same to the procurement officer in writing.

The CONTRACTOR's attention is especially directed to chapter 103 and 103D, Hawaii Revised Statutes and the chapter 91, Hawaii Administrative Rules issued by the Procurement Policy Board.

5.2 PATENTED ARTICLE

The CONTRACTOR will be required to, and shall hold the [STATE] and its duly authorized representatives harmless against all demands, claims, actions, suits or liabilities arising from the use of any patented article, patented process or patented appliance used in connection with the contract. Any royalties due or becoming due for the use of any patented article or process shall be paid by the CONTRACTOR and shall be deemed to be included within the proposal amount and contract price.

5.3 SUBCONTRACTING AND ASSIGNING

The CONTRACTOR shall not subcontract any of the work to be performed under his contract with the [STATE], nor shall he assign the contract to any other person or firm without written permission from the procurement officer, and no subcontract or assignment made without such permission will be recognized. No subcontract shall, under any circumstances, relieve the CONTRACTOR of his obligation and liability under his contract with the [STATE], and all persons engaged in performing the work covered by the contract shall be considered employees of the CONTRACTOR.

5.4 ASSIGNMENT OF ANTITRUST CLAIMS

Vendor and purchaser recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the purchaser. Therefore, vendor hereby assigns to purchaser any and all claims for such overcharges as to goods and materials purchased in connection with this order or contract, except as to overcharges which result from antitrust violations commencing after the price is established under this order or contract and which are not passed on to the purchaser under an escalating clause.

5.5 RESPONSIBILITY FOR DAMAGE CLAIMS

The CONTRACTOR shall indemnify, hold harmless and defend the [STATE] and its officers, employees, agents, and representatives from all suits, actions, claims, damages, and judgements of any character that may be brought against the [STATE] by whomsoever, on account of any injuries or damages sustained by any person and property, due to the negligent acts or omissions by the CONTRACTOR, or any of his officers, employees, subcontractors, assignees, or representatives, in the performance of the contract. In the event the [STATE] and the CONTRACTOR are found to be joint tortfeasors with respect to any such injuries or damages, the CONTRACTOR's obligations to indemnify the [STATE] under this section shall extend only to the CONTRACTOR's pro rata share of negligence as determined in accordance with section 663-12, Hawaii Revised Statutes.

5.6 PERSONAL LIABILITY OF PUBLIC OFFICIALS

In carrying out any of the provisions of the contract or in exercising any power or authority granted to them by the contract, there shall be no liability upon the procurement officer or his authorized representatives, either personally or as officials of the [STATE], it being understood that in such matters, they act solely as agents and representatives of the [STATE].

SECTION 6 - MODIFICATIONS AND TERMINATIONS OF CONTRACTS FOR GOODS AND SERVICES

6.1 GENERAL

(A) This section of the General Terms and Conditions apply to goods and services contracts.

(B) If the clauses set forth in these General Terms and Conditions are plainly inappropriate for use in the proposed contract, then the chief procurement officer or the head of a purchasing agency shall make a written determination describing the circumstances requiring a material variation, provided that notice of any variation shall be stated in the invitation for bids or request for proposals.

(C) Any material variation from these clauses shall be described in the solicitation documents in substantially the following form:

"General Terms and Conditions Section no. _____, entitled _____, is not a part of the general terms and conditions of this contract and has been replaced by Special Provisions clause no. _____, entitled _____."

(D) Alternative clauses are allowed in some instances to permit accommodation of differing contract situations.

6.2 CONTRACT CHANGE ORDERS

(A) A change order (Exhibit I) is a written order signed by the procurement officer, directing the CONTRACTOR to make changes which the "change clause" of the contract authorizes the procurement officer to order without the consent of the CONTRACTOR.

(1) Change clause. By written order, at any time, and without notice to any surety, the procurement officer may, unilaterally, order of the contractor: Changes in the work within the scope of the contract; and changes in the time of performance of the contract that do not alter the scope of the contract work.

(B) Adjustments of price or performance time. If any such change order increases or decreases the CONTRACTOR's cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, an adjustment shall be made and the contract modified in writing accordingly. Any adjustment in contract price made pursuant to this section shall be determined in accordance with the price adjustment section 6.8. Failure of the parties to agree to an adjustment shall not excuse the CONTRACTOR from proceeding with the contract as changed, provided that the procurement officer promptly and duly makes such provisional adjustments in payment or time for the direct costs of the work as the [STATE] deems reasonable. The right of the CONTRACTOR to dispute the contract price or time or both shall not be waived by its performing the work, provided however, that it follows the notice requirements for disputes and claims established by the contract or these rules.

(C) Time period for claim. Within ten days after receipt of a written change order under subsection (A), unless such period is extended by the procurement officer in writing, the CONTRACTOR shall respond with a claim for an adjustment. The requirement for a timely written response cannot be waived and shall be a condition precedent to the assertion of a claim.

(D) Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if written notice is not given prior to final payment under this contract.

(E) Claims not barred. In the absence of such a change order, nothing in this clause shall be deemed to restrict the CONTRACTOR's right to pursue a claim as permitted under the contract or for breach of contract.

6.3 CONTRACT MODIFICATIONS

(A) Contract modification. By a written order (Exhibit J), at any time, and without notice to any surety, the procurement officer, subject to mutual agreement of the parties to the contract and all appropriate adjustments, may make modifications within the general scope of this contract to include any one or more of the following:

- (1) Drawings, designs, or specifications, for the goods to be furnished;
- (2) Method of shipment or packing;
- (3) Place of delivery;
- (4) Description of services to be performed;
- (5) Time of performance (i.e., hours of the day, days of the week, etc.);
- (6) Place of performance of the services; or
- (7) Other provisions of the contract accomplished by mutual action of the parties to the contract.

(B) Adjustments of price or time for performance. If any modification increases or decreases the CONTRACTOR's cost of, or the time required for, performance of any part of the work under this contract, an adjustment shall be made and the contract modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined, where applicable, in accordance with the price adjustment clause of this contract or as negotiated.

(C) Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if written agreement of modification is not made prior to final payment under this contract.

(D) Claims not barred. In the absence of a contract modification, nothing in this clause shall be deemed to restrict the CONTRACTOR's right to pursue a claim under the contract or for a breach of contract.

6.4 AUTHORIZATION FOR A STOP WORK ORDER

(A) Section 6.5 applies to any fixed-price contract under which work stoppage may be required for reasons such as advancements in the state of the art, production modifications, engineering changes, or realignment of programs.

(B) Stop work orders shall not exceed sixty consecutive days and shall include, as appropriate: (1) A clear description of the work to be suspended; (2) Instructions as to the issuance of further orders by the CONTRACTOR for material or services; (3) Guidance as to action to be taken on subcontracts; and (4) Other instructions and suggestions to the CONTRACTOR for minimizing costs.

(C) As soon as feasible after a stop work order is issued: (1) The contract will be terminated; or (2) The stop work order will be canceled or extended in writing beyond the period specified in the order.

(D) In any event, some such action must be taken before the specified stop work period expires. If an extension of the stop work order is necessary, it must be evidenced by a supplemental agreement. Any cancellation of a stop work order shall be subject to the same approvals as were required for the issuance of the order.

6.5 STOP WORK ORDERS

(A) Order to stop work. The procurement officer, may, by written order to the CONTRACTOR, at any time, and without notice to any surety, require the CONTRACTOR to stop all or any part of the work called for by this contract. This order shall be for a specified period not exceeding sixty days after the order is delivered to the CONTRACTOR, unless the parties agree to any further period. Any such order shall be identified specifically as a stop work order issued pursuant to this subsection. Upon receipt of such an order, the CONTRACTOR shall forthwith comply with its terms and take all reasonable steps to minimize the occurrence of costs allocable to the work covered by the order during the period of work stoppage. Before the stop work order expires, or within any further period to which the parties shall have agreed, the procurement officer shall either: (1) Cancel the stop work order; or (2) Terminate the work covered by such order as provided in the "termination for default" clause or the "termination for convenience" clause of this contract.

(B) Cancellation or expiration of the order. If a stop work order issued under this section is canceled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, the CONTRACTOR shall have the right to resume work. An appropriate adjustment shall be made in the delivery schedule or contract price, or both, and the contract shall be modified in writing accordingly, if: (1) The stop work order results in an increase in the time required for, or in the CONTRACTOR's cost properly allocable to, the performance of any part of this contract; and (2) The CONTRACTOR asserts a claim for such an adjustment within thirty days after the end of the period of work stoppage; provided that, if the procurement officer decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this contract.

(C) Termination of stopped work. If a stop work order is not canceled and the work covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop work order shall be allowable by adjustment or otherwise.

(D) Adjustment of price. Any adjustment in contract price made pursuant to this clause shall be determined in accordance with the price adjustment clause of this contract.

6.6 VARIATIONS IN QUANTITIES FOR DEFINITE QUANTITY CONTRACTS

Variation in quantity. Upon the agreement of the parties, the quantity of goods or services or both specified in this contract may be increased by a maximum of ten percent provided: the unit prices will remain the same except for any price adjustments otherwise applicable; and the procurement officer makes a written determination that such an increase will either be more economical than awarding another contract or that it would not be practical to award another contract.

6.7 VARIATIONS IN QUANTITIES FOR INDEFINITE QUANTITY CONTRACTS

(A) No clause is provided here because in indefinite quantity contracts the flexibility as to the [STATE's] obligation to order and the CONTRACTOR's obligation to deliver should be designed to meet using agency needs.

(B) However, the contract's Special Provisions should provide for: the minimum quantity, if any, the [STATE] is obligated to order and the CONTRACTOR to provide; whether there is a quantity the [STATE] expects to order and how this quantity relates to any minimum and maximum quantities that may be ordered under the contract; any maximum quantity the [STATE] may order and the CONTRACTOR must provide; and whether the [STATE] is obligated to order its actual requirements under the contract, or in the case of a multiple award that the [STATE] will order its actual requirements from the CONTRACTORS under the multiple award subject to any minimum or maximum quantity stated.

6.8 PRICE ADJUSTMENT

Price adjustment. Any adjustment in contract price pursuant to a provision in the contract shall be made in one or more of the following ways:

(A) By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;

(B) By unit prices specified in the contract or subsequently agreed upon;

- (C) By the costs attributable to the event or situation covered by the clause, plus appropriate profit or fee, all as specified in the contract or subsequently agreed upon;
- (D) In such other manner as the parties may mutually agree; or
- (E) In the absence of agreement between the parties, by a unilateral determination by the procurement officer of the costs attributable to the event or situation covered by the clause, plus appropriate profit or fee, all as computed by the procurement officer in accordance with generally accepted accounting principles and applicable sections of chapters 3-123 and 3-126, HAR.

Submission of cost or pricing data. The CONTRACTOR shall provide cost or pricing data for any price adjustments subject to the provisions of subchapter 15, chapter 3-122, HAR.

6.9 NOVATION OR CHANGE OF NAME

(A) No assignment. No [STATE] contract is transferable, or otherwise assignable, without the written consent of the chief procurement officer or the head of a purchasing agency provided that a CONTRACTOR may assign monies receivable under a contract after due notice to the [STATE].

(B) Recognition of a successor in interest; novation. When in the best interest of the [STATE], a successor in interest may be recognized in a novation agreement in which the transferor and the transferee shall agree that: the transferee assumes all of the transferor's obligations; the transferor waives all rights under the contract as against the [STATE]; and unless the transferor guarantees performance of the contract by the transferee, the transferee shall furnish all required bonds.

(C) Change of name. When a CONTRACTOR requests to change the name in which it holds a contract with the [STATE], the procurement officer responsible for the contract shall, upon receipt of a document indicating such change of name (for example an amendment to the articles of incorporation of the corporation), enter into an agreement with the requesting CONTRACTOR to effect such a change of name. The agreement changing the name shall specifically indicate that no other terms and conditions of the contract are thereby changed.

(D) Reports. All change of name or novation agreements effected hereunder other than by the chief procurement officer shall be reported to the chief procurement officer within thirty days of the date that the agreement becomes effective.

(E) Actions affecting more than one purchasing agency. Notwithstanding the provisions of subsections (A) through (C), when a CONTRACTOR holds contracts with more than one purchasing agency of the [STATE], the novation or change of name agreements herein authorized shall be processed only through the office of the chief procurement officer.

6.10 CLAIMS BASED ON A PROCUREMENT OFFICER'S ACTIONS OR OMISSIONS

(A) Notice of Claim. If any action or omission on the part of a procurement officer or designee of such officer, requiring performance changes within the scope of the contract constitutes the basis for a claim by the CONTRACTOR for additional compensation, damages, or an extension of time for completion, the CONTRACTOR shall continue with performance of the contract in compliance with the directions or orders of such officials, but by so doing, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, damages, or an extension of time for completion; provided:

- (1) The CONTRACTOR shall have given written notice to the procurement officer or designee of such officer:
 - (a) Prior to the commencement of the work involved, if at that time the CONTRACTOR knows of the occurrence of such action or omission; or (b) Within thirty days after the CONTRACTOR knows of the occurrence of such action or omission, if the CONTRACTOR did not have such knowledge prior to the commencement of the work; or (c) Within such further time as may be allowed by the procurement officer in writing.
- (2) This notice shall state that the CONTRACTOR regards the act or omission as a reason which may entitle the CONTRACTOR to additional compensation, damages, or an extension of time. The procurement officer or designee of such officer, upon receipt of such notice may rescind such action, remedy such omission, or take such other steps as may be deemed advisable in the discretion of the procurement officer or designee of such officer;
- (3) The notice required by subparagraph (1) describes as clearly as practicable at the time the reasons why the CONTRACTOR believes that additional compensation, damages, or an extension of time may be remedies to which the CONTRACTOR is entitled; and
- (4) The CONTRACTOR maintains and, upon request, makes available to the procurement officer within a reasonable time, detailed records to the extent practicable, of the claimed additional costs or basis for an extension of time in connection with such changes.

(B) Limitation of clause. Nothing herein contained, shall excuse the CONTRACTOR from compliance with any rules of law precluding any [STATE] officers and any CONTRACTORS from acting in collusion or bad faith in issuing or performing change orders which are clearly not within the scope of the contract.

(C) Adjustments of price. Any adjustment in the contract price made pursuant to this clause shall be determined in accordance with the price adjustment clause of the contract.

TERMINATION FOR DEFAULT

(A) Termination for default. If the CONTRACTOR refuses or fails to perform any of the provisions of this contract with such diligence as will ensure its completion within the time specified in this contract, or any extension thereof, otherwise fails to timely satisfy the contract provisions, or commits any other substantial breach of this contract, the procurement officer may notify the CONTRACTOR in writing of the delay or non-performance, and if not cured in ten days or any longer time specified in writing by the procurement officer, such officer may terminate the CONTRACTOR's right to proceed with the contract or such part of the contract as to which there has been delay or other breach of contract. In the event of termination in whole or in part, the procurement officer may procure similar goods or services in a manner and upon terms deemed appropriate by the procurement officer. The CONTRACTOR shall continue performance of the contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.

(B) CONTRACTOR's duties. Notwithstanding termination of the contract and subject to any directions from the procurement officer, the CONTRACTOR shall take timely and necessary action to protect and preserve property in the possession of the CONTRACTOR in which the [STATE] has an interest.

(C) Compensation. Payment for completed goods delivered and accepted by the [STATE] shall be at the contract price. Payment for the protection and preservation of property shall be in an amount agreed upon by the CONTRACTOR and procurement officer; if the parties fail to agree, the procurement officer shall set an amount subject to the CONTRACTOR's rights under chapter 3-126, HAR. The [STATE] may withhold from amounts due the CONTRACTOR such sums as the procurement officer deems to be necessary to protect the [STATE] against loss because of outstanding liens or claims of former lien holders and to reimburse the [STATE] for the excess costs incurred in procuring similar goods and services.

(D) Excuse for nonperformance or delayed performance. Except with respect to defaults of subcontractors, the CONTRACTOR shall not be in default by reason of any failure in performance of this contract in accordance with its terms, including any failure by the CONTRACTOR to make progress in the prosecution of the work hereunder which endangers such performance, if the CONTRACTOR has notified the procurement officer within fifteen days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of the public enemy; acts of the STATE and any other governmental body in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; unusually severe weather; or for delay due to reasons beyond the CONTRACTOR's control. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, the CONTRACTOR shall not be deemed to be in default, unless the goods or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the CONTRACTOR to meet the contract requirements.

(E) Upon request of the CONTRACTOR, the procurement officer shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the CONTRACTOR's progress and performance would have met the terms of the contract, the delivery schedule shall be revised accordingly, subject to the rights of the [STATE] under the clause entitled in fixed-price contracts, "Termination for Convenience" and in cost-reimbursement contracts, "Termination". As used in this section, the term "subcontractor" means subcontractor at any tier.

(F) Additional rights and remedies. The rights and remedies provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

6.12 LIQUIDATED DAMAGES

(A) The following is for goods or services contracts when it is difficult to determine with reasonable accuracy the amount of damage to the [STATE] due to delays caused by late CONTRACTOR performance or nonperformance.

- (1) Liquidated damages. When the CONTRACTOR is given notice of delay or nonperformance as specified in subsection 6.11(A) termination for default clause of this contract and fails to cure in the time it is agreed specified, the CONTRACTOR shall pay to the [STATE] the dollar amount specified in the liquidated damages provision of the Special Provisions, if any, per calendar day from date set for cure until either the [STATE] reasonably obtains similar goods or services if the CONTRACTOR is terminated for default, or until the CONTRACTOR provides the supplies or services if the CONTRACTOR is not terminated for default. To the extent that the CONTRACTOR's delay or nonperformance is excused under subsection 6.11(D), excuse for nonperformance or delayed performance of the termination for default clause of this contract, liquidated damages shall not be due the [STATE]. The CONTRACTOR remains liable for damages caused other than by delay.

(B) If the contract will not have a termination for default clause and the liquidated damages are to be assessed for reasons other than delay, the chief procurement officer or the head of a purchasing agency may approve the use of any appropriate liquidated damages clause.

6.13 TERMINATION FOR CONVENIENCE

(A) Termination for convenience. The procurement officer may, when the interests of the [STATE] so require, terminate this contract in whole or in part, for the convenience of the [STATE]. The procurement officer shall give written notice of the termination to the CONTRACTOR specifying the part of the contract terminated and when termination becomes effective.

(B) CONTRACTOR's obligations. The CONTRACTOR shall incur no further obligations in connection with the terminated work and on the dates set in the notice of termination the CONTRACTOR will stop work to the extent specified. The CONTRACTOR shall also terminate outstanding orders and subcontracts as they relate to the terminated work. The CONTRACTOR shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work subject to the [STATE's] approval. The procurement officer may direct the CONTRACTOR to assign the CONTRACTOR's right, title, and interest under terminated orders or subcontracts to the [STATE]. The CONTRACTOR must still complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so.

(C) Right to goods. The procurement officer may require the CONTRACTOR to transfer title and deliver to the [STATE] in the manner and to the extent directed by the procurement officer: any completed goods; and the partially completed goods and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights, hereinafter called "manufacturing material," as the CONTRACTOR has specifically produced or specially acquired for the performance of the terminated part of this contract.

The CONTRACTOR shall, upon direction of the procurement officer, protect and preserve property in the possession of the CONTRACTOR in which the [STATE] has an interest. If the procurement officer does not exercise this right, the CONTRACTOR shall use best efforts to sell such goods and manufacturing materials. Use of this section in no way implies that the [STATE] has breached the contract by exercise of the termination for convenience clause.

(D) Compensation:

- (1) The CONTRACTOR shall submit a termination claim specifying the amounts due based on the termination for convenience together with cost or pricing data to the extent required by subchapter 15, chapter 3-122, HAR, bearing on such claim. If the CONTRACTOR fails to file a termination claim within one year from the effective date of termination, the procurement officer may pay the CONTRACTOR, if at all, an amount set in accordance with paragraph (3) below.
- (2) The procurement officer and the CONTRACTOR may agree to settlement provided the CONTRACTOR has filed a termination claim supported by cost or pricing data to the extent required by subchapter 15, chapter 3-122, HAR, and that the settlement does not exceed the total contract price plus settlement costs reduced by payments previously made by the [STATE], the proceeds of any sales of goods and manufacturing materials under subparagraph (3)(c), below, and the contract price of the work not terminated.
- (3) Absent complete agreement under paragraph (2), the procurement officer shall pay the CONTRACTOR the following amounts, provided payments agreed to under paragraph (2) shall not duplicate payments under this paragraph for the following:
 - (a) Contract prices for goods or services accepted under the contract;

- (b) Costs incurred in preparation and performing the terminated portion of the work plus a five percent markup on actual direct costs on such portion of the work, such markup shall not include anticipatory profit or consequential damages, less amounts paid or to be paid for accepted goods or services; provided, that if it appears that the CONTRACTOR would have sustained a loss if the entire contract would have been completed, no markup shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;
 - (c) Subject to the prior approval of the procurement office the costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to subsection (B) of this clause. Subcontractors shall be entitled to a markup of no more than ten percent on direct costs incurred to the date of termination. These costs must not include costs paid in accordance with subparagraph (3)(b).
 - (d) The total sum to be paid the CONTRACTOR under this subparagraph shall not exceed the total contract price reduced by the amount of payments otherwise made, the proceeds of any sales of goods and manufacturing materials under subsection (C), and the contract price of work not terminated.
- (4) Cost claimed, agreed to, or established under paragraphs (2) and (3) shall be in accordance with chapter 3-123, HAR.

6.14 TERMINATION FOR COST-REIMBURSEMENT CONTRACTS

Termination for cost-reimbursement contracts. The only cost recognized as allowable shall be in accordance with the cost principles set forth in chapter 3-123, HAR, provided that if a written determination is approved at a level above the procurement officer, such cost principle may be modified by contract.

6.15 COMPLAINTS AND PROTESTS

Chapter 3-126, HAR, provides that:

(A) Complainants should seek resolution of their complaints initially with the procurement officer or the office that issued the solicitation. Such complaints should be made in writing.

(B) Protests shall be made in writing to the chief procurement officer or the head of a purchasing agency, and shall be filed in duplicate within five working days after the protestor knows or should have known of the facts giving rise therein. A protest is considered filed when received by the chief procurement officer or the head of a purchasing agency. Protests filed after the five day period shall not be considered.

(C) Protestors may file a protest on any phase of solicitation or award including but not limited to specifications preparation, bid solicitation, award, or disclosure of information marked confidential in the bid or offer.

(D) To expedite handing of protests, the envelope should be labeled "Protest" and either served personally or sent by registered or certified mail, return receipt requested, to the chief procurement officer or head of a purchasing agency. The written protest shall include as a minimum the following:

- (1) The name and address of the protestor;
- (2) Appropriate identification of the procurement, and, if a contract has been awarded, its number;
- (3) A statement of reasons for the protest; and
- (4) Supporting exhibits, evidence, or documents to substantiate any claims unless not available within the filing time in which case the expected availability date shall be indicated.

(E) The notice of protest shall be deemed communicated and filed within forty-eight hours from the time of mailing, if mailed as provided in this section, or communicated and filed when received personally by the chief procurement officer of the head of the purchasing agency.

6.16 DISPUTES

(A) All controversies between the [STATE] and the CONTRACTOR which arise under, or are by virtue of, this contract and which are not resolved by mutual agreement, shall be decided by the procurement officer in writing, within ninety calendar days after a written request by the CONTRACTOR for a final decision concerning the controversy; provided that if the procurement officer does not issue a written decision, or within such longer period as may be agreed upon by the parties, then the CONTRACTOR may proceed as if an adverse decision had been received.

(B) The procurement officer shall immediately furnish a copy of the decision to the CONTRACTOR, by certified mail, return receipt requested, or by any other method that provides evidence of receipt.

(C) Any such decision shall be final and conclusive, unless fraudulent, or the CONTRACTOR brings an action seeking judicial review of the decision in the circuit court of the STATE within the six months from the date of receipt of the decision.

(D) The CONTRACTOR shall comply with any decision of the procurement officer and proceed diligently with performance of this contract pending final resolution by the circuit court of this STATE of any controversy arising under, or by virtue of, this contract, except where there has been a material breach of contract by the [STATE]; provided that in any event the CONTRACTOR shall proceed diligently with the performance of the contract where the chief procurement officer has made a written determination that continuation of work under the contract is essential to the public health and safety.

6.17 REMEDIES

Any dispute arising under or out of this contract is subject to chapter 3-126, HAR.

SECTION 7 - PAYMENT

7.1 METHOD OF PAYMENT

The method of payment under the contract shall be as set forth in the Special Provisions. Further, payment to the CONTRACTOR shall be made in accordance with the contract provision at the contracted price(s). Invoices shall be payable upon certification by authorized [STATE] personnel that the CONTRACTOR has satisfactorily performed the work required herein.

7.2 FINAL PAYMENT

In accordance with section 103-53, HRS, final payment under any contract of \$10,000 or more shall not be made until the CONTRACTOR has filed with the purchasing agency a tax clearance from the State Director of Taxation that all delinquent taxes levied or accrued under STATE statutes have been paid.

7.3 PROMPT PAYMENT BY CONTRACTOR TO SUBCONTRACTORS

(A) Any money, other than retainage, paid to a CONTRACTOR shall be dispersed to subcontractors within ten days after receipt of the money in accordance with the terms of the subcontract; provided that the subcontractor has met all the terms and conditions of the subcontract and there are no bona fide disputes; and

(B) Upon final payment to the CONTRACTOR, full payment to the subcontractor, including retainage, shall be made within ten days after receipt of the money; provided that there are no bona fide disputes over the subcontractor's performance under the subcontract.

7.4 INTEREST

Interest on amounts ultimately determined to be due to a CONTRACTOR or the [STATE] shall be payable at the statutory rate applicable to judgements against the [STATE] under chapter 662, HRS, from the date the claim arose through the date of decision or judgement, whichever is later.

(EXHIBIT A)
AGREEMENT

THIS AGREEMENT, made and entered into as of the ____ day of _____, A.D. 19__, by and between the State of Hawaii, hereinafter called the "STATE", through its Procurement Officer, and _____ of _____ hereinafter called the "CONTRACTOR".

W I T N E S S E T H T H A T:

WHEREAS, the written offer of the CONTRACTOR has been accepted by the STATE as the lowest responsive and responsible offer submitted pursuant to a call for offers:

NOW, THEREFORE, in consideration of the mutual promises hereinafter set forth, the parties agree as follows:

A. Scope of Work. The CONTRACTOR agrees to perform the following work: _____

_____ all in strict accordance with the terms and conditions of this Agreement. It is understood that this Agreement includes as a part hereof the General Terms and Conditions, dated September 1, 1995; and the Invitation for Bids (IFB) No. _____ including the offer, Special Provisions, and Specifications contained therein; which are attached hereto.

B. Compensation. As compensation for the work to be performed by the CONTRACTOR, the STATE agrees to pay the CONTRACTOR _____
_____ at the time and in the manner set forth in the offer Specifications.

IN WITNESS WHEREOF, the parties have executed this Agreement,
effective the day and year first above written.

STATE OF HAWAII

By _____
ROBERT J. GOVERNS
Procurement Officer
State Procurement Office

By _____
Its

(Affix Corporate Seal,
if applicable)

By _____
Its

CONTRACTOR ACKNOWLEDGEMENT:

STATE OF _____)
: SS.
_____ COUNTY OF _____)

On this _____ day of _____, 19____, before me
appeared _____ and _____
_____ to me personally known, who, being by me
duly sworn, did say that he/she/they is/are _____
_____ and _____

of _____, the
CONTRACTOR named in the foregoing instrument, and that he/she/they is/are
authorized to sign said instrument in behalf of the CONTRACTOR, and
acknowledges that he/she/they executed said instrument as the free act
and deed of the CONTRACTOR.

(Notary Seal)

Notary Public
State of _____
My commission expires: _____

(EXHIBIT B)
SURETY [BID] [PROPOSAL] BOND

Bond No. _____

KNOW ALL MEN BY THESE PRESENTS:

That we, [Full name or legal title of offeror] as Principal, hereinafter called the Principal, and [Bonding company], a corporation duly licensed for the purpose of making, guaranteeing, or becoming sole surety upon bonds or undertakings required or authorized by the laws of the State of Hawaii, as Surety, hereinafter called the Surety, are held and firmly bound unto [State/county entity], as Owner, in the penal sum of [Required amount of offer security] dollars (\$_____), lawful money of the United States of America, for the payment of which sum well and truly to be made, the said Principal and the said Surety bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS:

The Principal has submitted an offer for [Project by number and brief description].

NOW, THEREFORE:

The condition of this obligation is such that if the [State/county entity] shall reject said offer, or in the alternate, accept the offer of the Principal and the Principal shall enter into a Contract with the [State/county entity] in accordance with the terms of such offer, and give such bond or bonds as may be specified in the solicitation or Contract Documents with good and sufficient surety for the faithful performance of such Contract and for the prompt payment of labor and material furnished in the prosecution thereof as specified in the solicitation then this obligation shall be null and void, otherwise to remain in full force and effect.

Signed this _____ day of _____, 19____.

(Principal)

By _____
Its

(Surety)

By _____
Its Attorney-in-Fact

(EXHIBIT C)

PERFORMANCE BOND (SURETY)

KNOW ALL MEN BY THESE PRESENTS:

That _____
(full legal name and street address of Principal)

as Principal, (hereinafter referred to as "Principal"), and

_____,
(name and street address of bonding company)

as Surety, (hereinafter referred to as "Surety"), a corporation(s) authorized to transact business as a surety in the State of Hawaii, are held and firmly bound unto the

_____,
(State/County entity)

its successors and assigns, (hereinafter referred to as "Obligee"), in the amount of _____ DOLLARS (\$_____), to which payment Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the above-bound Principal has entered into a Contract with Obligee dated _____ for _____

_____, (hereinafter referred to as the "Contract"), which Contract is incorporated herein by reference and made a part hereof.

NOW THEREFORE, the condition of this obligation is such that:

If the Principal shall promptly and faithfully perform, and fully complete the Contract in strict accordance with the terms of the Contract as said Contract may be modified or amended from time to time; then this obligation shall be void; otherwise to remain in full force and effect.

Surety to this Bond hereby stipulates and agrees that no changes, extensions of time, alterations, or additions to the terms of the Contract, including the work to be performed thereunder, and the specifications or drawings accompanying same, shall in any way affect its obligation on this bond, and it does hereby waive notice of any such changes, extensions of time, alterations, or additions, and agrees that they shall become part of the Contract.

In the event of Default by Principal, of the obligations under the Contract, then after written Notice of Default from the Oblige to the Surety and the Principal, Surety shall either remedy the Default, or take over the work to be performed under the Contract and complete such work, subject, however, to the limitation of the penal sum of this bond.

Signed and sealed this _____ day of _____, 199____.

Principal Seal

By its _____

By its _____

Surety Seal

By its _____

By its _____

ALL SIGNATURES MUST BE ACKNOWLEDGED
BY A NOTARY PUBLIC

(EXHIBIT D)
PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS:

That we, _____
(full legal name and street address of CONTRACTOR)
as principal, hereinafter called CONTRACTOR, is held and firmly
bound unto _____,
(State/County entity)
its successors and assigns, as Obligee, hereinafter called
Obligee, in the amount of _____
(Dollar amount of contract)

DOLLARS (\$_____), lawful money of the United States of
America, for the payment of which to the said Obligee, well and truly to
be made, CONTRACTOR binds itself, its heirs, executors, administrators,
successors and assigns, firmly by these presents. Said amount is evidenced
by:

- ☐ Legal tender;
- ☐ Share Certificate unconditionally assigned to or made payable
at sight to _____
Description _____;
_____;
- ☐ Certificate of Deposit, No. ____, dated _____
issued by _____,
drawn on _____,
a bank, savings institution or credit union insured by the
Federal Deposit Insurance Corporation or the National Credit
Union Administration, payable at sight or unconditionally
assigned to _____;
- ☐ Cashier's Check No. _____, dated _____,
drawn on _____,
a bank, savings institution or credit union insured by the
Federal Deposit Insurance Corporation or the National Credit
Union Administration, payable at sight or unconditionally
assigned to _____;

- / Teller's Check No. _____, dated _____,
drawn on _____,
a bank, savings institution or credit union insured by the
Federal Deposit Insurance Corporation or the National Credit
Union Administration, payable at sight or unconditionally
assigned to _____;
- / Treasurer's Check No. _____, dated _____,
drawn on _____,
a bank, savings institution or credit union insured by the
Federal Deposit Insurance Corporation or the National Credit
Union Administration, payable at sight or unconditionally
assigned to _____;
- / Official Check No. _____, dated _____,
drawn on _____,
a bank, savings institution or credit union insured by the
Federal Deposit Insurance Corporation or the National Credit
Union Administration, payable at sight or unconditionally
assigned to _____;
- / Certified Check No. _____, dated _____,
accepted by a bank, savings institution or credit union insured
by the Federal Deposit Insurance Corporation or the National
Credit Union Administration, payable at sight or
unconditionally assigned to _____;

WHEREAS:

The CONTRACTOR has by written agreement dated _____
entered into a contract with Obligee for the following Project:

_____ which is hereinafter referred to as
the Contract.

NOW, THEREFORE,

The condition of this obligation is such that, if CONTRACTOR shall promptly and faithfully perform the Contract in accordance with, in all respects, the stipulations, agreements, covenants and conditions of the Contract as it now exists or may be modified according to its terms, and shall deliver the Project to the Obligee, or to its successors or assigns, fully completed as in the Contract specified and free from all liens and claims and without further cost, expense or charge to the Obligee, its officers, agents, successors or assigns, free and harmless from all suits or actions of every nature and kind which may be brought for or on account of any injury or damage, direct or indirect, arising or growing out of the doing of said work or the repair or maintenance thereof or the manner of doing the same or the neglect of the CONTRACTOR or its agents or servants or the improper performance of the Contract by the CONTRACTOR or its agents or servants or from any other cause, then this obligation shall be void; otherwise it shall be and remain in full force and effect.

(EXHIBIT E)
LABOR AND MATERIAL PAYMENT BOND (SURETY)

KNOW ALL MEN BY THESE PRESENTS:

That _____
(full legal name and street address of Principal)
as Principal (hereinafter referred to as "Principal"), and
_____,
(name and street address of bonding company)
as Surety (hereinafter referred to as "Surety"), a corporation(s)
authorized to transact business as a surety in the State of Hawaii, are
held and firmly bound unto the

_____,
(State/County entity)
its successors and assigns, (hereinafter referred to as "Obligee"), in the
amount of _____ Dollars (\$_____
_____), to which payment Principal and Surety bind themselves,
their heirs, executors, administrators, successors and assigns, jointly and
severally, firmly by these presents.

WHEREAS, the above-bound Principal has entered into a Contract with
Obligee dated _____ for _____

_____, (hereinafter referred to as the "Contract"),
which Contract is incorporated herein by reference and made a part hereof.

NOW THEREFORE, the condition of this obligation is such that if the
Principal shall promptly make payment to any Claimant, as hereinafter
defined, for all labor and materials supplied to the Principal for use in
the performance of the Contract, then this obligation shall be void;
otherwise to remain in full force and effect.

1. Surety to this Bond hereby stipulates and agrees that no changes, extensions of time, alterations, or additions to the terms of the Contract, including the work to be performed thereunder, and the specifications or drawings accompanying same, shall in any way affect its obligation on this bond, and it does hereby waive notice of any such changes, extensions of time, alterations, or additions, and agrees that they shall become part of the Contract.

2. A "Claimant" shall be defined herein as any person who has furnished labor or materials to the Principal for the work provided in the Contract.

As provided in Section 103D-324, Hawaii Revised Statutes, every Claimant who has not been paid in full after two months from the completion and final settlement of the Contract may institute an action against the Principal and its Surety and have the rights adjudicated in the action, and judgment rendered thereon; subject to the Obligee's priority on the performance bond. If the full amount of the liability of the Surety on the bond is insufficient to pay the full amount of the claims, then after paying the full amount due the Obligee, the remainder shall be distributed pro rata among the claimants.

Signed and sealed this _____ day of _____, 199____.

Principal Seal

By its _____

By its _____

Surety Seal

By its _____

By its _____

ALL SIGNATURES MUST BE ACKNOWLEDGED
BY A NOTARY PUBLIC

(EXHIBIT F)
LABOR AND MATERIAL PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS:

That we, _____
(full legal name and street address of CONTRACTOR)
as principal, hereinafter called CONTRACTOR, is held and firmly
bound unto _____,
(State/County entity)
its successors and assigns, as Obligee, hereinafter called
Obligee, in the amount of _____
(Dollar amount of contract)

DOLLARS (\$_____), lawful money of the United States of
America, for the payment of which to the said Obligee, well and truly to
be made, CONTRACTOR binds itself, its heirs, executors, administrators,
successors and assigns, firmly by these presents. Said amount is evidenced
by:

- ☐ Legal tender;
- ☐ Share Certificate unconditionally assigned to or made payable
at sight to _____
Description _____;
_____;
- ☐ Certificate of Deposit, No. ____, dated _____
issued by _____,
drawn on _____,
a bank, savings institution or credit union insured by the
Federal Deposit Insurance Corporation or the National Credit
Union Administration, payable at sight or unconditionally
assigned to _____;
- ☐ Cashier's Check No. _____, dated _____,
drawn on _____,
a bank, savings institution or credit union insured by the
Federal Deposit Insurance Corporation or the National Credit
Union Administration, payable at sight or unconditionally
assigned to _____;

- / Teller's Check No. _____, dated _____,
drawn on _____,
a bank, savings institution or credit union insured by the
Federal Deposit Insurance Corporation or the National Credit
Union Administration, payable at sight or unconditionally
assigned to _____;
- / Treasurer's Check No. _____, dated _____,
drawn on _____,
a bank, savings institution or credit union insured by the
Federal Deposit Insurance Corporation or the National Credit
Union Administration, payable at sight or unconditionally
assigned to _____;
- / Official Check No. _____, dated _____,
drawn on _____,
a bank, savings institution or credit union insured by the
Federal Deposit Insurance Corporation or the National Credit
Union Administration, payable at sight or unconditionally
assigned to _____;
- / Certified Check No. _____, dated _____,
accepted by a bank, savings institution or credit union insured
by the Federal Deposit Insurance Corporation or the National
Credit Union Administration, payable at sight or
unconditionally assigned to _____;

WHEREAS:

The CONTRACTOR has by written agreement dated _____
entered into a contract with Obligee for the following Project:

_____ which is hereinafter referred to as
the Contract.

NOW, THEREFORE,

The condition of this obligation is such that, if CONTRACTOR shall promptly and faithfully perform the Contract in accordance with, in all respects, the stipulations, agreements, covenants and conditions of the Contract as it now exists or may be modified according to its terms, free from all liens and claims and without further cost, expense or charge to the Obligee, its officers, agents, successors or assigns, free and harmless from all suits or actions of every nature and kind which may be brought for or on account of any injury or damage, direct or indirect, arising or growing out of the doing of said work or the repair or maintenance thereof or the manner of doing the same or the neglect of the CONTRACTOR or its agents or servants or the improper performance of the Contract by the CONTRACTOR or its agents or servants or from any other cause, and shall promptly pay all persons supplying labor and materials for the performance of the Contract, then this obligation shall be void; otherwise it shall be and remain in full force and effect.

AND IT IS HEREBY STIPULATED AND AGREED that suit on this bond may be brought before a court of competent jurisdiction without a jury, and that the sum or sums specified in the said Contract as liquidated damages, if any, shall be forfeited to the Obligee, its successors or assigns, in the event of a breach of any, or all, or any part of, the covenants, agreements, conditions, or stipulations contained in the Contract or in this bond in accordance with the terms thereof.

AND IT IS HEREBY STIPULATED AND AGREED that this bond shall inure to the benefit of any and all persons entitled to file claims for labor performed or materials furnished in said work so as to give any and all such persons a right of action as contemplated by Sections 103D-324(d) and 103D-324(e), Hawaii Revised Statutes.

The amount of this bond shall be reduced by and to the extent of any payment or payments made in good faith hereunder, inclusive of the payment of mechanics' liens which may be filed of record against the Project, whether or not claim for the amount of such lien be presented under and against this bond.

Signed and sealed this _____ day of _____, 199____.

CONTRACTOR Seal

By _____
Its

By _____
Its

*ALL SIGNATURES MUST BE ACKNOWLEDGED
BY A NOTARY PUBLIC

(EXHIBIT G)
[FOR USE WITH PERFORMANCE AND PAYMENT BONDS]

CONTRACTOR ACKNOWLEDGMENT:

STATE OF _____)
_____ COUNTY OF _____) : SS.

On this _____ day of _____, 19____,
before me appeared _____ and
_____ to me personally known, who,
being by me duly sworn, did say that he/she/they is/are _____
_____ and _____
of _____ the
CONTRACTOR named in the foregoing instrument, and that he/she/they is/are
authorized to sign said instrument in behalf of the CONTRACTOR, and
acknowledges that he/she/they executed said instrument as the free act
and deed of the CONTRACTOR.

(Notary Seal)

Notary Public

State of _____

My commission expires: _____

(EXHIBIT H)

[FOR USE WITH SURETY PERFORMANCE AND PAYMENT BONDS]

SURETY ACKNOWLEDGMENT:

STATE OF _____)
 :
 _____ COUNTY OF _____) SS.

On this _____ day of _____, 19____, before
me personally came _____ and _____
_____ to me known, who, being by me duly sworn, did
depose and say that _____ resides in _____
; that _____ is the Attorney-in-Fact of _____
_____ the corporation described in and which executed the attached
instrument; that _____ knows corporate seal of the said corporation;
that the seal affixed to the said instrument is such corporate seal; and
that it was so affixed by order of the Board of Directors of the said
corporation; and that _____ signed _____ name thereto by like
order.

(Notary Seal)

Notary Public

State of

My commission expires:

**SURETY BOND
ACKNOWLEDGEMENT
(EXHIBIT H)**

August 18, 1994

(EXHIBIT I)
CHANGE ORDER FORM

STATE OF HAWAII
[DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES]
[STATE PROCUREMENT OFFICE]

CHANGE ORDER NO. _____ Date _____
CONTRACTOR _____ Contract No. _____

Contract Title: _____

A. CONTRACTOR IS TO PERFORM THE FOLLOWING CHANGES:

B. CONTRACTOR'S RESPONSE DUE WITHIN TEN CALENDAR DAYS:

1. The changes described in A above will result in an increase ____ decrease ____ of \$_____.
2. The change issued in A above will be completed by _____.

Contractor's Signature and Date

C. STATEMENT OF CONTRACT FUNDS

Original Contract Price \$ _____
Previous Adjusted Contract Price \$ _____
Amount this Change: Plus ____ Minus ____ _____
New Adjusted Contract Price \$ _____

D. VALIDATION OF PRICE ADJUSTMENT

User Agency Date [Procurement Officer] Date

DISTRIBUTION: Original - Contracting Office cc: Contractor
Using Agency
[DAGS, Pre-Audit]

(EXHIBIT J)
CONTRACT MODIFICATION FORM

STATE OF HAWAII
[DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES]
[STATE PROCUREMENT OFFICE]

MODIFICATION ORDER NO. _____ Date _____
Contractor _____ Contract No. _____
Contract Title _____

A. MODIFICATIONS

The following modifications are to be performed in accordance with all contract stipulations (specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions by mutual action of the parties to the contract.)

B. CONTRACTOR'S QUOTATION

The modifications described in A above will be performed at a contract price__ increase __ decrease of \$_____. Contractor will not undertake to perform the changes in A above until this modification order has been approved and issued.

Contractor's Signature and Date

C. STATEMENT OF CONTRACT FUNDS

Original Contract Price \$_____
Previous Adjusted Contract Price \$_____
Amount this Change: Plus ____ Minus ____
New Adjusted Contract Price \$_____

D. VALIDATION OF CONTRACT MODIFICATION

User Agency Date [Procurement Officer] Date

DISTRIBUTION: Original - Contracting Office cc: Contractor
User Agency
[DAGS, Pre-Audit]